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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1908**

State of Minnesota,
Respondent,

vs.

Scott Solon Schaefer-Bonovsky,
Appellant.

**Filed November 12, 2019
Affirmed
Hooten, Judge**

Stearns County District Court
File Nos. 73-CR-18-78, 73-CR-18-4550, 73-CR-18-5451

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, Rebecca A. Becker, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Worke, Judge; and Kirk,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant argues that his sentence was illegally modified after adjudication when the district court aggregated two consecutive sentences for Domestic Abuse No Contact Order (DANCO) violations into a single sentence in violation of Minn. Sent. Guidelines II.F (2016). Because any error in the district court's combining the sentences into a single sentence was harmless and did not affect appellant's substantial rights, we affirm.

FACTS

On March 9, 2018, the district court issued a pretrial DANCO that prohibited appellant Scott Solon Schaefer-Bonovsky from having any contact with his mother ("first DANCO"). Just under three months later, law enforcement arrested Schaefer-Bonovsky and the state charged him with, among other charges, three counts of felony domestic assault after an altercation with his girlfriend in a Walmart parking lot. The district court issued another DANCO that prohibited Schaefer-Bonovsky from having any contact with his girlfriend ("second DANCO").

While in jail, Schaefer-Bonovsky telephoned his girlfriend five times and spoke to his mother once in violation of the DANCOs. Based on these phone calls, the state charged Schaefer-Bonovsky with six counts of violating a DANCO under Minn. Stat. § 629.75, subd. 2(d)(1) (2016). Each count carries a maximum sentence of five years imprisonment, up to a \$10,000 fine, or both. Schaefer-Bonovsky pleaded guilty to two counts of violating a DANCO as well as other unrelated offenses.

On August 24, 2018, the district court held a sentencing hearing and sentenced Schaefer-Bonovsky to 33 months in prison for the first DANCO violation and 12 months and one day in prison for the second DANCO violation, to be served consecutively. Felony DANCO violations are offenses eligible for permissive consecutive sentences under Minn. Sent. Guidelines II.F.2.a(1)(ii). Immediately after the district court orally executed the second DANCO sentence, the state requested that the district court aggregate the two sentences into a single 45-month sentence pursuant to Minn. Sent. Guidelines II.F. Though the state was correct that the guidelines require aggregation of sentences executed on the same day, the guidelines direct the commissioner of corrections—and not the district court—to aggregate the sentences. Minn. Sent. Guidelines II.F. Nevertheless, the district court complied with the state’s request. Later that day, the district court signed an order listing the two sentences and stating that the aggregated sentence was 45 months in prison. This appeal follows.

D E C I S I O N

On appeal, Schaefer-Bonovsky argues that his sentence was illegally modified when the district court aggregated the two consecutive sentences into a single sentence after adjudication because only the commissioner of corrections is authorized to aggregate consecutive sentences. Whether a statute or a provision of the sentencing guidelines has been properly construed is a question of law we review de novo. *State v. Zeimet*, 696 N.W.2d 791, 793 (Minn. 2005).

Even when an error occurs, if the error does not affect a defendant’s substantial rights, it must be disregarded as harmless. Minn. R. Crim. P. 31.01; *see also State v. Hill*,

801 N.W.2d 646, 658 (Minn. 2011) (providing a court may disregard an error where it did not affect the substantial rights of a defendant and did not meaningfully affect the verdict). To determine if an error is harmless, an appellate court must decide if there is a reasonable possibility that the error substantially influenced the decision maker. *State v. Taylor*, 869 N.W.2d 1, 14 (Minn. 2015). If there is no reasonable possibility, the error is harmless. *Id.* When an appellate court finds a procedural error to be harmless, the court should end its inquiry there. *State v. Bell*, 719 N.W.2d 635, 642 (Minn. 2006).

In a single proceeding, the district court sentenced Schaefer-Bonovsky to 33 months for the first DANCO violation and 12 months and one day for the second DANCO violation, with the sentences to be served consecutively. Minnesota Sentencing Guidelines provide, “[i]f two or more sentences are consecutively executed at the same time and by the same court, the Commissioner of Corrections must aggregate the sentence durations into a single fixed sentence.” Minn. Sent. Guidelines II.F. This provision states that it is the role of the commissioner of corrections, not the district court, to aggregate consecutive sentences executed at the same time. At the request of the state immediately after the district court sentenced Schaefer-Bonovsky, the district court pronounced that the sentences were aggregated so that Schaefer-Bonovsky would serve a cumulative 45-month-and-one-day sentence.

While Schaefer-Bonovsky does not dispute that his aggregated sentence as pronounced by the district court is correct, he argues that the district court procedurally erred by aggregating his sentence because the guidelines direct only the commissioner of corrections to perform the aggregation. Even if the district court was not authorized to

perform the aggregation at sentencing, the procedural error was harmless as it does not affect the duration or form of Schaefer-Bonovsky's sentence.

We hold this alleged procedural error harmless because the error did not affect Schaefer-Bonovsky's substantive rights, it must be disregarded under Minn. R. Crim. P. 31.01.

Affirmed.